

Hearing Date: November 1, 2021, at 9:30AM (Atlantic Standard Time)
Objection Deadline: October 15, 2021 at 4:00PM (Atlantic Standard Time)

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Debtors.¹

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Movants,

v.

SUIZA DAIRY CORPORATION,

Respondent.

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**DEBTORS' NOTICE OF MOTION AND MOTION FOR ORDER EXCLUDING FACT
TESTIMONY OF JANICE RAMIREZ VELEZ AND EXPERT TESTIMONY OF
LEONARDO GIACCHINO**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

PLEASE TAKE NOTICE that the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Public Buildings Authority (“PBA”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth and PBA, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² requests this Court to issue an order, substantially in the form of the proposed order attached hereto as Exhibit A, precluding the expert testimony of Dr. Leonardo Giacchino (the “Giacchino Testimony,” which includes the *Unsworn Statement of Dr. Leonardo Giacchino, Ph.D.* [ECF 18072-1] (the “Giacchino Statement”)) and the factual testimony by Ms. Janice Ramirez Velez (the “Ramirez Velez Testimony,” and together with the Giacchino Testimony, the “Claim Calculation Testimony”), which Suiza Dairy Corporation (“Suiza”) intends to proffer at the hearing on the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 17627] (as it may be amended, modified, or supplemented, the “Plan”).

This Motion is made on the ground that, as set forth in detail in the accompanying *Memorandum of Law in Support of Debtors’ Motion for Order Excluding Fact Testimony of Janice Ramirez Velez and Expert Testimony of Leonardo Giacchino* that (i) the Claim Calculation Testimony is not relevant to any objection Suiza can put forward as to whether the Plan satisfies the confirmation requirements contained in PROMESA section 314 or the incorporated sections of the Bankruptcy Code, and therefore should be precluded in its entirety; and (ii) the Giacchino Testimony does not qualify as permissible expert evidence pursuant to Rule 702 of the Federal

² PROMESA is codified at 48 U.S.C. §§ 2101–2241.

Rules of Evidence, and therefore should be precluded in its entirety on this separate and independent basis.³

This Motion is based on this Notice of Motion, the *Memorandum of Law in Support of Debtors' Motion for Order Excluding Fact Testimony of Janice Ramirez Velez and Expert Testimony of Leonardo Giacchino* filed concurrently herewith, the Plan, the papers, pleadings and records on file herein, and any argument of counsel.

Pursuant to the *Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 17640] (the “Confirmation Discovery Procedures Order”), this Motion will be heard before the Honorable Laura Taylor Swain, United States District Judge, on November 1, 2021 at 9:30 a.m. (AST), or as soon thereafter as counsel may be heard, in the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Avenue, Federal Building, San Juan, Puerto Rico, or as otherwise directed by the Court.

Pursuant to ¶ 2.a.(i)(A) of the Court’s *Third Amended Standing Order* dated March 3, 2021 [ECF No. 15901-1], counsel for the Debtors sent a letter to counsel for Suiza by email on September 27, 2021 to propose a meet and confer in an attempt to resolve the matters set forth in this Motion. Counsel for the Debtors sent a follow-up email to counsel for Suiza on September 28, 2021. To date, counsel for Suiza has not responded. Therefore, despite Debtors’ best efforts, the parties have not resolved the matters in controversy, necessitating the filing of this Motion.

Pursuant to the *Fifteenth Amended Case Management Procedures* (the “Case Management Procedures”) [ECF No. 17127-1], and Confirmation Discovery Procedures Order, any objection to this Motion shall be filed and served on Debtors through their undersigned counsel by **October**

³ The requested order would extend to the *Giacchino Statement*.

15, 2021 at 4:00 p.m. (Atlantic Standard Time). The relief requested may be granted without hearing if no objection is timely filed and served in accordance with the Case Management Procedures and the Confirmation Discovery Procedures Order.

In accordance with the Court's standing orders, the Case Management Procedures, and the Confirmation Discovery Procedures Order, the Oversight Board has provided notice of this motion, in the form of paper copies thereof sent by first class mail or digital copies sent by email, to (a) all creditors who filed notices of intent to participate in discovery in connection with confirmation proceedings, (b) all creditors who have filed objections to confirmation, (c) all creditors who filed notices of correspondence, and (d) the Master Service List (as defined in the Case Management Procedures), which is available on the Debtors' case website at <https://cases.primeclerk.com/puertorico>. The Oversight Board submits that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of Page Intentionally Left Blank]

Dated: September 30, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

Martin J. Bienenstock
Brian. S. Rosen
Margaret A. Dale
Julia D. Alonzo
(Admission *Pro Hac Vice*)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

Attorneys for the Financial Oversight and Management Board as representative for the Debtors

/s/ Luis F. del Valle-Emmanuelli

Luis F. del Valle-Emmanuelli
USDC No. 209514
P.O. Box 79897
Carolina, PR 00984-9897
Tel: (787) 647-3503
Fax: n/a
dvelawoffices@gmail.com
OF COUNSEL FOR
A&S LEGAL STUDIO, PSC
434 Avenida Hostos
San Juan, PR 00918
Tel: (787) 751-6764/763-0565
Fax: (787) 763-8260

Co-Attorneys for the Financial Oversight and Management Board as representative for the Debtors

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case, and further caused notice to be delivered as described in the motion.

/s/ Luis F. del Valle-Emmanuelli
Luis F. del Valle-Emmanuelli